

117TH CONGRESS  
1ST SESSION

# S. 2062

To increase the security of United States rail infrastructure along the North American Interchange Service to the direct and indirect supply of U.S. military and related institutions, to facilitate cross-border trade among the United States, Mexico, or Canada, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 15, 2021

Mr. CORNYN (for himself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To increase the security of United States rail infrastructure along the North American Interchange Service to the direct and indirect supply of U.S. military and related institutions, to facilitate cross-border trade among the United States, Mexico, or Canada, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4       This Act may be cited as the “Stopping America’s  
5 Foreign Enemies Through Rail And Infrastructure Na-  
6 tional Security Act” or the “SAFE TRAINS Act”.

1   **SEC. 2. REQUIREMENTS FOR RAILROAD FREIGHT CARS EN-**

2                   **TERING SERVICE IN THE UNITED STATES.**

3       (a) IN GENERAL.—Chapter 207 of title 49, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6   **“§ 20704. Requirements for railroad freight cars en-**

7                   **tering service in the United States**

8       “(a) DEFINITIONS.—In this section:

9               “(1) COMPONENT.—The term ‘component’  
10      means a part or subassembly of a railroad freight  
11      car.

12               “(2) CONTROL.—The term ‘control’ means the  
13      power, whether direct or indirect and whether or not  
14      exercised, through the ownership of a majority or a  
15      dominant minority of the total outstanding voting  
16      interest in an entity, representation on the board of  
17      directors of an entity, proxy voting on the board of  
18      directors of an entity, a special share in the entity,  
19      a contractual arrangement with the entity, a formal  
20      or informal arrangement to act in concert with an  
21      entity, or any other means, to determine, direct,  
22      make decisions, or cause decisions to be made for  
23      the entity.

24               “(3) COST OF SENSITIVE TECHNOLOGY.—The  
25      term ‘cost of sensitive technology’ means the aggre-

1 gate cost of the sensitive technology located on a  
2 railroad freight car.

3 “(4) COUNTRY OF CONCERN.—The term ‘coun-  
4 try of concern’ means a country that—

5 “(A) is identified by the Department of  
6 Commerce as a nonmarket economy country (as  
7 defined in section 771(18) of the Tariff Act of  
8 1930 (19 U.S.C. 1677(18))) as of the date of  
9 the enactment of the SAFE TRAINS Act;

10 “(B) was identified by the United States  
11 Trade Representative in the most recent report  
12 required under section 182 of the Trade Act of  
13 1974 (19 U.S.C. 2242) as a foreign country in-  
14 cluded on the priority watch list (as defined in  
15 subsection (g)(3) of such section); and

16 “(C) is subject to monitoring by the Trade  
17 Representative under section 306 of the Trade  
18 Act of 1974 (19 U.S.C. 2416).

19 “(5) NET COST.—The term ‘net cost’ has the  
20 meaning given such term in chapter 4 of the  
21 USMCA or in any subsequent free trade agreement  
22 between the United States, Mexico, and Canada.

23 “(6) QUALIFIED FACILITY.—The term ‘quali-  
24 fied facility’ means a facility that is not owned or  
25 under the control of a state-owned enterprise.

1           “(7) QUALIFIED MANUFACTURER.—The term  
2       ‘qualified manufacturer’ means a railroad freight car  
3       manufacturer that is not owned or under the control  
4       of a state-owned enterprise.

5           “(8) RAILROAD FREIGHT CAR.—The term ‘rail-  
6       road freight car’ means a car designed to carry  
7       freight or railroad personnel by rail, including—

- 8           “(A) a box car;
- 9           “(B) a refrigerator car;
- 10          “(C) a ventilator car;
- 11          “(D) an intermodal well car;
- 12          “(E) a gondola car;
- 13          “(F) a hopper car;
- 14          “(G) an auto rack car;
- 15          “(H) a flat car;
- 16          “(I) a special car;
- 17          “(J) a caboose car;
- 18          “(K) a tank car; and
- 19          “(L) a yard car.

20           “(9) SENSITIVE TECHNOLOGY.—The term ‘sen-  
21       sitive technology’ means any device embedded with  
22       electronics, software, sensors, or other connectivity,  
23       that enables the device to connect to, collect data  
24       from, or exchange data with another device, includ-  
25       ing—

1                 “(A) onboard telematics;  
2                 “(B) remote monitoring software;  
3                 “(C) firmware;  
4                 “(D) analytics;  
5                 “(E) GPS satellite and cellular location  
6                 tracking systems;  
7                 “(F) event status sensors;  
8                 “(G) predictive component condition and  
9                 performance monitoring sensors; and  
10                “(H) similar sensitive technologies embed-  
11                ded into freight railcar components and sub-  
12                assemblies.

13                “(10) STATE-OWNED ENTERPRISE.—The term  
14                ‘state-owned enterprise’ means—

15                “(A) an entity that is owned by, or under  
16                the control of, a national, provincial, or local  
17                government of a country of concern, or an  
18                agency of such government; or

19                “(B) an individual acting under the direc-  
20                tion or influence of a government or agency de-  
21                scribed in subparagraph (A).

22                “(11) SUBSTANTIALLY TRANSFORMED.—The  
23                term ‘substantially transformed’ means a component  
24                of a railroad freight car that undergoes an applica-  
25                ble change in tariff classification as a result of the

1 manufacturing process, as described in chapter 4  
2 and related annexes of the USMCA or in any subse-  
3 quent free trade agreement between the United  
4 States, Mexico, and Canada.

5 “(12) USMCA.—The term ‘USMCA’ has the  
6 meaning given such term in section 3 of the United  
7 States-Mexico-Canada Agreement Implementation  
8 Act (19 U.S.C. 4502).

9 “(b) REQUIREMENTS FOR RAILROAD FREIGHT CARS  
10 ENTERING SERVICE IN THE UNITED STATES.—

11 “(1) LIMITATION ON RAILROAD FREIGHT  
12 CARS.—A railroad freight car wholly manufactured  
13 on or after the date that is 1 year after the date of  
14 the enactment of the SAFE TRAINS Act may only  
15 operate on the United States freight railroad inter-  
16 change system if—

17 “(A) the railroad freight car is manufac-  
18 tured, assembled, and substantially trans-  
19 formed, as applicable, by a qualified manufac-  
20 turer in a qualified facility;

21 “(B) none of the sensitive technology lo-  
22 cated on the railroad freight car, including com-  
23 ponents necessary to the functionality of the  
24 sensitive technology, originates from a country

1           of concern or is sourced from a state-owned en-  
2           terprise; and

3           “(C) none of the content of the railroad  
4           freight car, excluding sensitive technology,  
5           originates from a country of concern or is  
6           sourced from a state-owned enterprise that has  
7           been determined by a recognized court or ad-  
8           ministrative agency of competent jurisdiction  
9           and legal authority to have violated or infringed  
10          valid United States intellectual property rights  
11          of another, including such a finding by a Fed-  
12          eral district court under title 35 or the United  
13          States International Trade Commission under  
14          section 337 of the Tariff Act of 1930 (19  
15          U.S.C. 1337).

16           “(2) LIMITATION ON RAILROAD FREIGHT CAR  
17          CONTENT.—

18           “(A) PERCENTAGE LIMITATION.—Not  
19          later than 1 year after the date of the enact-  
20          ment of the SAFE TRAINS Act, a railroad  
21          freight car may operate on the United States  
22          freight railroad interchange system only if—

23           “(i) not more than 20 percent of the  
24          content of the railroad freight car, cal-  
25          culated by the net cost of all components

1           of the car and excluding the cost of sen-  
2           sitive technology, originates from a country  
3           of concern or is sourced from a state-  
4           owned enterprise; or

5                 “(ii) not later than 2 years after the  
6                 date of the enactment of the SAFE  
7                 TRAINS Act, the percentage described in  
8                 clause (i) is not more than 15 percent.

9                 “(B) CONFLICT.—The percentages speci-  
10                 fied in subparagraph (A) shall apply notwithstanding  
11                 any apparent conflict with the provi-  
12                 sions of chapter 4 of the USMCA.

13                 “(c) REGULATIONS AND PENALTIES.—

14                 “(1) REGULATIONS REQUIRED.—Not later than  
15                 1 year after the date of the enactment of the SAFE  
16                 TRAINS Act, the Secretary of Transportation shall  
17                 issue such regulations as are necessary to carry out  
18                 this section, including regulations necessary for the  
19                 monitoring, enforcement, and sensitive technology  
20                 requirements under this section.

21                 “(2) CERTIFICATION REQUIRED.—To be eligible  
22                 to provide a railroad freight car for operation on the  
23                 United States freight railroad interchange system,  
24                 the manufacturer of such car shall annually certify

1 to the Secretary that any railroad freight cars so  
2 provided meets the requirements under this section.

3       “(3) COMPLIANCE.—

4           “(A) VALID CERTIFICATION REQUIRED.—

5           At the time a railroad freight car begins opera-  
6           tion on the United States freight railroad  
7           interchange system, the manufacturer of such  
8           railroad freight car shall have valid certification  
9           described in paragraph (2) for the year in  
10          which such car begins operation.

11           “(B) REGISTRATION OF NONCOMPLIANT  
12          CARS PROHIBITED.—A railroad freight car  
13          manufacturer may not register, or cause to be  
14          registered, a railroad freight car that does not  
15          comply with the requirements under this section  
16          in the Association of American Railroad’s  
17          Umler system.

18        “(4) CIVIL PENALTIES.—

19           “(A) IN GENERAL.—A railroad freight car  
20          manufacturer that has manufactured a railroad  
21          freight car for operation on the United States  
22          freight railroad interchange system that the  
23          Secretary of Transportation determines, after  
24          written notice and an opportunity for a hearing,  
25          has violated this section is liable to the United

1 States Government for a civil penalty of at least  
2 \$100,000, but not more than \$250,000, for  
3 each such violation for each railroad freight car.

4           “(B) PROHIBITION FOR VIOLATIONS.—The  
5 Secretary of Transportation may prohibit a rail-  
6 road freight car manufacturer with respect to  
7 which the Secretary has assessed more than 3  
8 violations under subparagraph (A) from pro-  
9 viding additional railroad freight cars for oper-  
10 ation on the United States freight railroad  
11 interchange system until the Secretary deter-  
12 mines—

13           “(i) such manufacturer is in compli-  
14 ance with this section; and

15           “(ii) all civil penalties assessed to  
16 such manufacturer pursuant to subpara-  
17 graph (A) have been paid in full.”.

18       (b) CLERICAL AMENDMENT.—The chapter analysis  
19 for chapter 207 of title 49, United States Code, is amend-  
20 ed by adding at the end the following:

“20704. Requirements for railroad freight cars entering service in the United States.”.

